

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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| Carlos Ortuno, #45355-004, |) | C.A. No. 6:04-23242-CMC-WMC |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | OPINION and ORDER |
| |) | |
| Ruth Yancy, Warden, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Petitioner is a *pro se* federal inmate seeking review pursuant to 28 U.S.C. § 2241 of the method used by the Bureau of Prisons (BOP) to calculate good time credit. Respondent filed a motion to dismiss, or in the alternative for summary judgment, on February 7, 2005, to which Petitioner responded on March 16, 2005.

In accordance with the court's order of reference, 28 U.S.C. § 636(b), and Local Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge William M. Catoe for pre-trial proceedings and a Report and Recommendation. On August 16, 2005, the Magistrate Judge issued a Report recommending Respondent be granted summary judgment. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner filed objections to the Report and Recommendation on August 31, 2005.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which

a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, and the Report and Recommendation of the Magistrate Judge, the court agrees with the conclusions of the Magistrate Judge. Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. This court agrees that the holding in the case at bar is controlled by the Fourth Circuit's recent case of *Yi v. Federal Bureau of Prisons*, 412 F.3d 526 (4th Cir. 2005).

IT IS THEREFORE ORDERED that Respondent's motion for summary judgment is granted and this matter is dismissed with prejudice.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 12, 2005